

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BENNY A. ESPINOZA,

Petitioner,

vs.

J. WALKER, Warden,

Respondent.

No. C 07-1741 JSW (PR)

ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at California State Prison-Sacramento in Represa, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted after a jury trial of murder in Santa Clara County Superior Court and sentenced on July 15, 2005 to a period of 26 years-to-life incarceration. Petitioner's appeal to the California Court of Appeal was denied in 2005. The Supreme Court of California denied his petition for review in 2006. The instant federal habeas petition was filed on March 27, 2007.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person

1 in custody pursuant to the judgment of a State court only on the ground that he is in
 2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
 3 § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
 5 why the writ should not be granted, unless it appears from the application that the applicant
 6 or person detained is not entitled thereto.” *Id.* § 2243.

7 II Legal Claims

8 The petition raises the following ground for relief: the trial court’s failure to
 9 provide proper instructions on Petitioner’s defense of self-defense violated his rights
 10 under the Fifth, Sixth and Fourteenth Amendments. Liberally construed, it does not
 11 appear from the face of the petition that Petitioner is not entitled to relief on his claims.
 12 Accordingly, Respondent is ordered to respond to the petition as set forth below.

13 CONCLUSION

14 For the foregoing reasons and for good cause shown,

15 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
 16 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of
 17 the State of California. The Clerk also shall serve a copy of this order on Petitioner.

18 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
 19 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
 20 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
 21 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
 22 portions of the state trial record that have been transcribed previously and that are relevant
 23 to a determination of the issues presented by the petition. If Petitioner wishes to respond
 24 to the answer, he shall do so by filing a traverse with the Court and serving it on
 25 Respondent within **thirty (30)** days of his receipt of the answer.


26 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
 27 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
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1 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
2 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
3 days of receipt of the motion, and Respondent shall file with the Court and serve on
4 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

5 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
6 the Court informed of any change of address by filing a separate paper captioned "Notice
7 of Change of Address." He must comply with the Court's orders in a timely fashion.
8 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
9 to Federal Rule of Civil Procedure 41(b)

10 IT IS SO ORDERED.

11 DATED: July 31, 2007

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13 _____
14 JEFFREY S. WHITE
15 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BENNY ESPINOZA,

Plaintiff,

v.

J. WALKER et al,

Defendant.

Case Number: CV07-01741 JSW

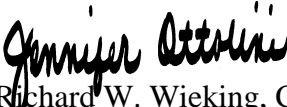
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 31, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Benny A. Espinoza
V90095
C.S.P.
P.O. Box 29
Represa, CA 95671-0066

Dated: July 31, 2007


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk